

MEMBER ADVISORY (AUS and NZ): COVID-19 INCIDENT NOTIFICATION REQUIREMENTS



27 January 2022

BACKGROUND

The Omicron variant of the COVID-19 virus is generally milder for most people, however the transmission rate has been and remains relatively high in Australia. In Australia it appears the peak of the omicron wave has passed as active case numbers are falling. By contrast New Zealand currently has low Omicron related case numbers, however it is expected those numbers will grow incrementally in the coming weeks and likely peak in March.

As a result, business reporting requirements for when a positive COVID-19 case occurs in the workplace has changed in some jurisdictions. In this advisory we seek to provide a review of the current requirements placed on employers across Australia and New Zealand for reporting what is considered a notifiable COVID-19 workplace incident. If a relevant government department contacts your business as a result of being required to register an incident, the business is obligated to provide any requested information and follow any directions given.

Additionally, we provide a review of the requirements, where necessary, for an individual to report a positive result from an individual using a rapid antigen test ("RAT") in each jurisdiction.

No matter the specific protocols and restrictions in your particular jurisdiction, as an employer your primary duty is to meet your workplace health and safety obligations to either eliminate or otherwise minimise the risks of COVID-19 in your workplace. This principle, along with worker consultation should be the basis of any response your business has in dealing with COVID-19 related issues in the workplace.

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AUSTRALIA

VICTORIA

From 14 January 2022, Victorian businesses are no longer required to notify WorkSafe Victoria of a confirmed COVID-19 positive worker attending the workplace, unless the individual requires hospitalisation or dies as a result of contraction at the workplace.

As an employer, if an employee has tested positive and been in the workplace you may be contacted by the Department of Health over possible workplace contact and infection of other employees. We provide a link to the Departments guidance on this issue: <https://www.coronavirus.vic.gov.au/case-workplace>

Additionally, employers are required to notify the Department of Health where there have been 5 or more cases of COVID-19 in a workplace within a 7-day period. We provide a link to the Departments outbreak notification form if required: <https://www.coronavirus.vic.gov.au/covid-outbreak-notification-form>

WorkSafe have advised that employers continue to be required to fulfil all other workplace related health and safety related obligations. This includes the ongoing use of COVIDSafe Plans, the use of facemasks, and QR code check-ins.

Positive RAT result

The Victorian Department of Health has also updated its advice in relation to a person testing positive on a rapid antigen test ("RAT") and the requirement of that individual to notify the Department of their positive result. We provide a links to the reporting page on their website: <https://www.coronavirus.vic.gov.au/report>

NEW SOUTH WALES

The NSW Public Health (COVID-19 Self-Isolation) Order 2021 notification requirements for workplaces have also changed recently. Essentially, NSW businesses are now no longer required to notify SafeWork NSW of a positive COVID-19 case unless:

- > the worker contracted COVID-19 in the workplace AND has been hospitalised as a result; or
- > a workplace fatality occurs that has been caused by a worker contracting COVID-19 at the workplace, or is likely to have contracted COVID-19 at the workplace.

If a positive COVID-19 case falls into either of the two abovementioned categories, the business is then required to notify SafeWork NSW via an online lodgement system. We provide a links to the reporting page on their website: <https://covid.safework.nsw.gov.au/forms/9377>

As part of the reporting process, businesses are required to provide the requested information which includes confirming compliance with the following:

- > Has a COVID Safe plan in place; and
- > Is using a QR code check-in process.

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Additionally, the notification lodgement process will also enquire:

- > if the business is currently closed as a result of the positive COVID-19 worker.
- > if the affected area in the workplace has been cleaned/disinfected.
- > whether the COVID-19 vaccination is mandatory for workers in the workplace

Any information collected by SafeWork NSW as part of the notification process will be stored in accordance with the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002*.

Positive RAT result

From 12 January 2022, if an individual in NSW tests positive when using a rapid antigen test (“RAT”) they are required to register the result with Service NSW via their online registration process at the following link: <https://www.service.nsw.gov.au/transaction/register-positive-rapid-antigen-test-result> or call Service NSW on 13 77 88.

TASMANIA

Tasmanian employers are required to notify WorkSafe Tasmania when it is confirmed that a worker has contracted COVID-19 through carrying out work and:

- > the person dies; or
- > the person is required to have treatment as an in-patient in a hospital; or
- > the reason the person contracted COVID-19 is reliably attributable to carrying out work that involves providing treatment or care to a person; or involves contact with human blood or body substances. In this case, the carrying out of work must be a significant contributing factor to the infection being contracted.

Notification in the stated circumstances is required regardless of whether the Department of Health/Public Health Services is already aware of the case. A business can notify WorkSafe Tasmania via an online lodgement at the following link: <https://worksafe.tas.gov.au/topics/Health-and-Safety/notify-worksafe> or by phone on 1300 366 322.

Positive RAT result

From 7 January 2022, if a person in Tasmania tests positive when using a rapid antigen test (“RAT”) they are required to register the result with Public Health via an online declaration form at the following link: <https://www.coronavirus.tas.gov.au/keeping-yourself-safe/information-for-positive-cases> or call Tasmanian Public Health on 1800 671 738.

QUEENSLAND

A Queensland business is required to notify Workplace Health and Safety Queensland (WHSQ) of a confirmed or probable case of COVID-19 as diagnosed by a medical practitioner and arising out of the conduct of the business or undertaking:

- > that requires the person to have immediate treatment as an in-patient in a hospital; or
- > to which the carrying out of work is a significant contributing factor, including any infection that is reliably attributable to carrying out work that involves providing treatment or care to a person, or that involves contact with human blood or bodily substances.

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A business can notify WHSQ of a related incident via an online lodgement at the following link: <https://www.worksafe.qld.gov.au/services/raise-a-workplace-safety-concern> or by calling them on 1300 362 128.

Positive RAT result

Currently in Queensland if a person tests positive when using a rapid antigen test (“RAT”) they are required to register the result with Queensland Health via an online registration at the following link: <https://www.qld.gov.au/rat-positive/rapid-antigen-test-registration> or call 134 268.

SOUTH AUSTRALIA

Under the current protocols, a South Australian business is only required to notify SafeWork SA of a positive COVID-19 case in the workplace if that case can reliably be attributed to a workplace exposure and:

- > the person is required to have treatment as an inpatient in hospital as a result; or
- > the person dies.

A business can notify SafeWork SA of a required incident via an online report at the following link: <https://www.safework.sa.gov.au/notify/workplace-incident> or by calling 1300 365 255.

Positive RAT result

In South Australia, if a person is a ‘close contact’ to a positive COVID-19 case they can access a kit of two free rapid antigen tests from a RAT Collection Point. Further information on this program and registration for these kits can be found at the following link:

<https://www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/conditions/infectious+diseases/covid-19/testing+and+tracing/rapid+antigen+testing+rat+for+covid-19>

If a person tests positive when using a rapid antigen test (“RAT”) they are required to register their positive result with SA Health within 24 hours and follow any directions they receive. This can be done online at the following link:

<https://forms.sa.gov.au/#/form/61d8bc18ad9c585180ab5454/app/61ef86664d4331e0dc359c5f>

If a workplace in South Australia is using RAT’s for workplace COVID-19 surveillance purposes, the business is required to report all results to SA Health whether positive, negative or invalid via the online reporting site:

<https://forms.sa.gov.au/#/form/61d8bc18ad9c585180ab5454/app/61ef88194d4331e0dc35a00b>

WESTERN AUSTRALIA

Currently in WA the Department of Mines, Industry Regulation and Safety does not have a detailed COVID-19 specific reporting protocol for businesses where a positive case of COVID-19 occurs in the workplace. However, the business must report a positive case to WA Health via their hotline 132 6843 and follow all relevant directions given.

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Positive RAT result

Effective from 10 January 2022 WA has revoked the ban on the use of rapid antigen tests ("RAT"). However, at the time of writing there is no requirement to register a positive result from using the test. Given related protocols change quickly, please confirm this requirement has not altered at the time of using a RAT. Currently WA residents will find locating such test kits difficult, however the WA Government has stated it expects to take delivery of 20 million test kits in March.

ACT

Given information related to positive COVID-19 cases is collected by ACT Health, businesses in the ACT are only required to notify WorkSafe ACT of a COVID-19 infection of a worker if:

- > there is evidence it was contracted at a workplace; AND
- > if the infected person is hospitalised.

If these conditions apply, a business can notify WorkSafe ACT via its online reporting site at the following link: <https://www.worksafe.act.gov.au/health-and-safety-portal/notify-worksafe>

Positive RAT result

Residents of the ACT who tests positive from using a RAT are required to register their result via the ACT Governments online registration system: <https://www.covid19.act.gov.au/stay-safe-and-healthy/rapid-antigen-test-rat-positive-result-registration-form> or by calling 02 5124 6500 between 8am and 6pm.

NT

Businesses in the NT are required to notify WorkSafe NT where:

- > a person dies from COVID-19 and the infection arises out of the conduct of the business or undertaking.
- > a person requires immediate treatment as an in-patient in a hospital for COVID-19 and the infection arises out of the conduct of the business or undertaking.

Notification is required regardless of whether the NT Department of Health is already aware of the case. Notifications can be made to WorkSafe NT by calling 1800 019 115.

Positive RAT result

Individuals in the NT who test positive from using a RAT are required to register the result online via the NT Governments online registration system: <https://coronavirus.nt.gov.au/stay-safe/living-with-covid-19/covid-19-positive> or by calling the COVID-19 Hotline on 1800 490 484.

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NEW ZEALAND

Government response to Omicron strain

The New Zealand Government announced (26 January 2022) a three-phase plan aimed at slowing down and limiting the spread of the Omicron outbreak. The plan is adaptive to the circumstances faced by the country at the time. The phases are summarised as follows:

- > **Phase 1** – a ‘stamp it out’ approach - contact tracing, isolation, and request that everyone who is symptomatic be tested at a community testing station or at a primary health provider. For positive cases there is a requirement to isolate for 14 days and 10 days for a contact
- > **Phase 2** - a reduction in the isolation period for cases to 10 days and contacts to 7 days in line with best practice overseas. There will be a wider use of the test to return-to-work policy where asymptomatic contacts in critical workforces can return a negative rapid antigen test in order to go to work. RAT’s will be integrated into the testing system at this phase and will work alongside PCR tests. RAT’s will be used when laboratories cannot provide PCR results within a useful time frame because of large volumes or transport delays.
- > **Phase 3** – This will involve rapid antigen testing for diagnosing COVID-19 and a self-service tool to enable identification of high-risk contacts will be significant to respond to the high volumes of Omicron cases.

Protection Framework (Traffic Lights)

New Zealand has a Protection Framework in place that follows a traffic light style approach to business and community settings to respond to COVID-19. Currently New Zealand has a Red traffic light setting in place. The red traffic light setting allows workplaces to remain open generally. The Red traffic light setting requires the use of the NZ My Vaccine Pass, the use of QR code scanning on entry to premise, and capacity limits when moving in and around the community. Facemasks are mandatory in retail settings, public venues and public transport.

Businesses in New Zealand should not knowingly allow workers to come to a workplace when they are sick with COVID-19 or required to self-isolate under public health guidelines for COVID-19. If they do, they are likely to be in breach of their duties under the Health and Safety at Work Act.

The overarching principle is that all New Zealand employers and their workers need to follow under any level of operation under the traffic light system is that communication between workers and their employer should be regular and open, and that each act in good faith to keep everyone as safe as possible.

Operating at Red

Based on the current information available from the Ministry of Business, Innovation and Employment, and that the greater printing industry falls within the overall manufacturing sector:

- > workers do not need to scan NZ COVID Tracer app QR codes upon entry to their usual place of work. However, all other persons visiting the premises (such as clients and contractors) are encouraged to scan or use an alternative method of site visitor entry record keeping.
- > The use of facemasks are encouraged in workplaces.

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- > Any retail related area of your business can remain open with capacity limits based on 1 metre distancing (not including workers). For retail aspects, face coverings are required (unless a person is exempt).
- > Where appropriate and possible, workers who can work from home should be permitted to do so.

Worker testing positive for COVID-19

Essentially, if a worker tests positive for COVID-19 and has attended the workplace during their infectious period a business needs to consider that other workers who were present during the same timeframe are potential contacts. Normally, NZ Public Health will contact the workplace and advise you of the infectious period of the worker.

Businesses will have a number of responsibilities should this situation arise in the workplace including gathering and assessing information on possible contacts with the infected worker and lodging that information with the National Investigation and Tracing Centre. We provide a link to the NZ Ministry of Health website which contains detailed and particularised guidance on the actions to follow if a worker becomes a confirmed COVID-19 case: <https://www.health.govt.nz/our-work/diseases-and-conditions/covid-19-novel-coronavirus/covid-19-health-advice-public/contact-tracing-covid-19/guidance-workplaces-have-case-covid-19>

This guide contains template information that you can use in your business for informing other workers, both close and casual contacts, as well as customers of the situation.

Businesses do not necessarily need to close down, however this decision will depend upon a range of circumstances and factors. We advise members in this situation contact their nearest Public Health Unit and follow their directions: <https://www.health.govt.nz/new-zealand-health-system/key-health-sector-organisations-and-people/public-health-units/public-health-unit-contacts>
There is a high likelihood your business will be required to undertake a cleaning of the premises.

Your business can apply for COVID-19 Leave Support and or Short-Term Absence Payments to cover employees who are isolating or awaiting results of a COVID-19 test. We provide a link to the government website for that purpose: <https://www.workandincome.govt.nz/covid-19/covid-19-support-for-employers.html>

Rapid antigen testing in New Zealand

Rapid Antigen Tests ("RAT") are an important tool for keeping workers protected and businesses operating. RAT's are useful for screening and workplace surveillance testing. The primary advantage of RAT's are that the samples do not need to go for pathology lab processing which can take several days to receive a result. By contrast, RAT testing will provide a result in under 30 minutes. Health NZ advises that RAT's are not considered a replacement for PCR testing. If an individual tests positive when using a RAT, they are expected to undertake a PCR test to confirm the result. Nonetheless, the NZ Government has approved nine specific testing kits for use in a range of circumstances, however there is currently a limited supply of these kits in the country.

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The New Zealand Government has also announced it has asked suppliers of RAT tests into New Zealand to consolidate all forward orders so they went through government, but those tests would go to the businesses who ordered them. The government has stated that the aim of this plan is to ensure co-ordination of distribution and ensure critical supply chains did not break down. Prime Minister Jacinda Ardern announced on Tuesday that the Government had 80 million rapid antigen tests on order, with 14 million arriving over the next month.

We provide a link to the government website which provides details on RAT's and their usage in the community and in workplaces: <https://www.health.govt.nz/our-work/diseases-and-conditions/covid-19-novel-coronavirus/covid-19-health-advice-public/assessment-and-testing-covid-19/rapid-antigen-testing> The government will provide an Interim Guidance on this website in the coming week for workplaces conducting RAT screening onsite.

CONTACT

Any Industrial Relations Member who has a related query should contact Charles Watson, GM – IR, Policy and Governance at The Real Media Collective via email: charles@thermc.com.au or mobile: +61 428 568 032.

DISCLAIMER

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